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Security Council

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Security Council Committee established pursuant to resolution 1970 (2011) concerning Libya

Note verbale dated 7 July 2011 from the Permanent Mission of Tunisia to the United Nations addressed to the Chair of the Committee

The Permanent Mission of Tunisia to the United Nations has the honour to submit herewith the report of Tunisia on measures taken to implement paragraphs 9, 10, 15 and 17 of Security Council resolution 1970 (2011) and Security Council resolution 1973 (2011) (see annex).

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Annex to the note verbale dated 7 July 2011 from the Permanent Mission of Tunisia to the United Nations addressed to the Chair of the Committee

[Original: Arabic]

National report of Tunisia on measures taken to implement Security Council resolutions 1970 (2011) and 1973 (2011) on the situation in Libya

1. Introduction

Since the outbreak of the Libyan crisis on 17 February 2011 and the resultant international measures consisting of the sanctions contained in Security Council resolutions 1970 (2011) and 1973 (2011), Tunisia, out of its regard for international law, has taken all necessary measures to ensure implementation of the requirements of those two resolutions. In this framework, Tunisian ministries, agencies and other relevant bodies have held coordination meetings to determine optimal approaches to that task.

As Tunisia submits its national report to the Sanctions Committee, reaffirming its compliance with internationally binding statutory instruments and implementing all the provisions of the two Security Council resolutions on the situation in Libya, it would like to take this opportunity to inform the Committee that the outbreak of the crisis in Libya has given rise to a new socio-economic and security-related situation in Tunisia which is causing it to be seriously harmed by the sanctions imposed upon Libya, owing to the neighbourly relations binding it to that State and the fact that it is Libya's foremost economic partner in the region.

Economic repercussions

These impacts have become more acute as Tunisia's economic difficulties have amplified since the Tunisian revolution, and the problems have increased since the beginning of the events in Libya, given the nature of the close relations binding our two countries and the depth of the economic relations and the extensive trade between them.

Libya is Tunisia's leading Arab partner among African States and its second most important customer after the European Union in terms of trade, investment and tourism.

However, the events in Libya have resulted in a decline in trade flows with that country: there has been an acute downturn that was reflected in a 22.5 per cent reduction in Tunisian exports to the Libyan market during the first two months of 2011, compared to 2010.

That decline has had a serious adverse impact on service providers, especially in the construction sector. We may note at this point that more than 40 Tunisian firms operate in Libya in various sectors, including construction and food processing.

In addition, there are over 1,300 Tunisian firms that export to Libya. These firms have been hard hit since the advent of the Libyan crisis. In the first place,

thousands of their workers and managerial staff have been laid off as a result of the problems they have had to face owing to the reduction or interruption of their activity. In the second place, they have had numerous problems that have adversely impacted their ability to meet their financial commitments to banks and other financial institutions.

The tourism sector and, in particular, medical tourism, has also been adversely impacted, with significant income losses.

Social and security-related repercussions

Over and above the economic repercussions of the Libyan crisis on the situation in Tunisia, there have also been social and security-related repercussions in recent months.

Social repercussions have included a substantial increase in unemployment as a result of the return of over 60,000 Tunisians from Libya. Tunisia's unemployment rate is now running at 19 per cent.

Furthermore, Tunisia has been inundated with over 500,000 refugees of various nationalities since the beginning of the Libyan crisis. These have included some 70,000 Libyans fleeing from areas where fighting has been taking place, many of whom have found shelter with their Tunisian brothers in the southern part of the country. In addition, large numbers of injured Libyans have been seeking treatment in Tunisian hospitals.

The massive refugee crisis continues to keep the Tunisian people and authorities fully occupied, as it continues to present them with socio-economic and ethical problems.

The other main security-related challenge confronting Tunisia consists in the constant and repeated violations of Tunisian territory, in which bombs fall near residential communities, and the resultant anger and resentment among the local inhabitants, who find themselves living in a situation of anxiety and fear. The problems occurring along the Tunisian-Libyan border have previously been referred to in a letter dated 21 May 2011 from the Government of Tunisia to the Secretary-General of the United Nations.

The past few months have also seen increasing security threats to Tunisia as a result of attempts on the part of terrorist elements to infiltrate Tunisian territory, taking advantage of the deployment of the national army along the border with Libya and its concentration in that area, and the pressures arising from the situation along Tunisia's borders with neighbouring States.

In addition to the above-mentioned challenges, the implementation of Security Council resolutions 1970 (2011) and 1973 (2011) confronts Tunisian exporters and businessmen who deal with Libya with a host of problems in view of the difficulty they are encountering in collecting payment from their Libyan customers. In this context, Tunisia recently asked the Committee for clarification on procedures for exporting non-prohibited items to Libya and to private firms that are not subject to sanctions, in view of the fact that the Libyan partner involved will normally settle its account with the Tunisian exporter through the very Libyan State banks that are targeted by international sanctions.

Tunisia has also notified the Committee, in accordance with the provisions of Security Council resolution 1970 (2011), paragraph 19, that it wishes to obtain an

exemption from the application of the provisions relating to the freezing of Libyan funds in Tunisia for the purpose of paying out pension benefits from accounts with the Libyan Social Insurance Fund to Tunisian citizens who formerly worked in Libya.

The Tunisian ministries and agencies concerned are being subjected to considerable pressure from Tunisian citizens, including exporters and former Tunisian workers employed in Libya who are returning to Tunisia following the outbreak of the situation in Libya. These ministries and agencies would like the Committee to respond to requests submitted to it in order to enable them to respond to questions from Tunisian citizens in a timely manner.

Tunisia also wishes to inform the Committee that it intends to submit to the Sanctions Committee a request under the Charter of the United Nations, article 50, for compensation for the severe damage sustained by the Tunisian economy as a result of the international sanctions imposed upon Libya.

2. Implementation by Tunisia of the provisions of the two Security Council resolutions

Measures taken by the Tunisian authorities under paragraphs 9 and 10 (arms embargo) of resolution 1970 (2011) on the situation in Libya

Arms embargo

Against the background of the efforts being made by the Tunisian authorities to prevent the entry of arms and related items to Libya by land and sea, Tunisian security units exhaustively search all vehicles and vessels coming from or bound for Libya. By this means, attempts to smuggle weapons and other banned equipment through southern Tunisia are thwarted. In addition, frequent monitoring operations are conducted around the clock along the border between the two countries.

Dual-use items

(a) *Military clothing*: Military uniforms or uniforms for Libyan police may not transit through or be exported from Tunisia.

(b) *Vehicles*: Tunisian territory may not be used for the transit of four-wheel-drive vehicles, small trucks, tractors or private vehicles carrying prohibited items. In addition, buses may not be exported to Libya.

Communications and dual-use equipment

The competent Tunisian authorities have issued the following decisions:

- No applications for authorization to send this type of equipment across the border shall be approved.
- The use of these types of equipment within Tunisian territory shall be prohibited.
- The competent authorities shall provide a list of equipment for which transit applications have been submitted, including satellite-based communication equipment (Thuraya and others), cable or wireless radio communication

equipment, communication software, means of encoding (equipment and software), signalling equipment, and GPRS/GPS equipment.

– Border customs posts shall be alerted to ensure that they are aware that the importation of telephones containing encoding equipment is prohibited; monitoring authorities, including customs and the National Guard, shall be alerted to the importance of interdicting the circulation and use of these items in Tunisian territory; and the Research and Studies Telecommunications Centre (CERT) and the National Digital Certification Agency (ANCE) shall be asked to provide us with a list of these types of equipment.

Measures taken by the Tunisian authorities under paragraph 15 (travel ban) of resolution 1970 (2011) on the situation in Libya

The Libyan elements referred to in Security Council resolutions 1970 (2011) and 1973 (2011) have been added to the list of persons barred from entry to Tunisia, and the list in question has been distributed to all security units and land, air and sea ports of entry. To date, no Libyan on the list has attempted to enter Tunisia, and accordingly no such person has been refused entry.

Measures taken by the Tunisian authorities under paragraph 17 (asset freeze) of resolution 1970 (2011) on the situation in Libya

The Central Bank of Tunisia has distributed a memorandum to lending institutions and approved intermediaries, instructing them to take the necessary measures to freeze all funds, monetary assets and other economic resources owned or controlled directly or indirectly by the Libyan individuals or entities listed in Security Council resolutions 1970 (2011) and 1973 (2011), and those measures have been duly taken.

To ensure optimal use of such frozen funds, a committee of competent persons is to be established with the mandate of formulating appropriate criteria for that purpose.

Measures taken by the Tunisian authorities in respect of goods that may lawfully cross the border

Basic items: Officers in charge of the customs posts concerned are authorized to permit the passage into Libya, under the applicable regulations, of basic consumer items including, inter alia, pasta, tomatoes, vegetable oils and children's diapers.

Medicines: Under the applicable regulations, the officer in charge of the border crossing post is authorized to permit the delivery of medicines across the border to the official Libyan agency empowered to import such medicines, subject to the approval of the competent authorities of the Ministry of Public Health. Such approval may be issued in advance where an invoice has been submitted in due form.

Exports to Libya by international corporations of goods of foreign origin: Goods of foreign origin that are exported to Libya through Tunisia are subject to inspection by the services of the Ministry of Health, the Ministry of Agriculture and the Ministry of Industry.

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Security Council

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1 December 2011

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Security Council Committee established pursuant to resolution 1970 (2011) concerning Libya

Note verbale dated 18 November 2011 from the Permanent Mission of Australia to the United Nations addressed to the Chair of the Committee

The Permanent Mission of Australia to the United Nations presents its compliments to the Chair of the United Nations Security Council Committee established pursuant to resolution 1970 (2011) concerning Libya. The Permanent Mission of Australia has the honour to enclose the report of Australia to the Security Council pursuant to paragraph 25 of resolution 1970 (2011) (see annex).

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Annex to the note verbale dated 18 November 2011 from the Permanent Mission of Australia to the United Nations addressed to the Chair of the Committee

Report of Australia to the Security Council pursuant to paragraph 25 of Security Council resolution 1970 (2011)

1. Paragraph 25 of resolution 1970 (2011), adopted on 26 February 2011 by the United Nations Security Council,

> *Calls upon* all Member States to report to the C. mittee within 120 days of the adoption of this resolution on the steps they have taken with a view to implementing effectively paragraphs 9, 10, 15 and 17.

2. Paragraphs 9, 10 and 17 of resolution 1970 (2011) are implemented in Australia by the Charter of the United Nations (Sanctions — Libyan Arab Jamahiriya) Regulations 2011 (the Libya Regulations). The Libya Regulations were made pursuant to subsection 6 (1) of the Charter of the United Nations Act 1945 (the Act) and, as such:

- In accordance with section 9 of the Act, the Libya Regulations have effect despite an Act enacted before the commencement of the Libya Regulations; or a law of a State or Territory; or an instrument made under such a law; or any provision of the Corporations Act 2001, or the Australian Securities and Investments Commission Act 2001, or of regulations made under those Acts; or an instrument made under such a provision.
- In accordance with subsection 10 (1) of the Act, no Act enacted at or after the commencement of section 10 of the Act may be interpreted as amending or repealing, or otherwise altering the effect or operation of, a provision of the Libya Regulations; or as authorizing the making of an instrument amending or repealing, or otherwise altering the effect or operation of, a provision of the Libya Regulations.

3. Paragraph 15 of resolution 1970 (2011) is implemented in Australia by the Migration (United Nations Security Council Resolutions) Regulations 2007.

4. References in the present report to "the Committee" are to the Committee established under paragraph 24 of resolution 1970 (2011).

Paragraph 9

5. The Libya Regulations define the items referred to in paragraph 9 ("arms and related materiel of all types, including weapons and ammunition, military vehicles and equipment, paramilitary equipment, and spare parts for the aforementioned") as "export sanctioned goods" (regulation 3), and define the direct or indirect supply, sale or transfer to Libya of export sanctioned goods as a "sanctioned supply" (regulation 4). Regulation 6 of the Libya Regulations prohibits the making of a sanctioned supply without the prior authorization of the Minister for Foreign Affairs ("the Minister") in accordance with regulation 7.

6. Regulation 7 of the Libya Regulations provides that the Minister may grant a person a permit authorizing the making of a sanctioned supply in accordance with, and subject to the conditions of, the exceptions set out in paragraph 9 of resolution

1970 (2011). In addition, the Minister may grant a permit to make a sanctioned supply in circumstances to which paragraph 4 of resolution 1973 (2011) applies.

7. Regulation 13CS of the Customs (Prohibited Exports) Regulations 1958 also prohibits the exportation of arms and related materiel, whose immediate or final destination is, or is intended to be, Libya without the prior authorization of the Minister.

8. The Libya Regulations define the conduct referred to in the second part of paragraph 9 of resolution 1970 (2011) (the direct or indirect supply, sale or transfer to Libya of technical assistance, training, financial or other assistance, related to military activities or the provision, maintenance or use of any arms and related materiel, including the provision of armed mercenary personnel) as a "sanctioned service" (regulation 5).

9. Regulation 9 of the Libya Regulations prohibits the provision of a sanctioned service that is either not authorized by the Minister in accordance with regulation 10, or is not provided in relation to a sanctioned supply authorized in accordance with regulation 7. Regulation 10 of the Libya Regulations provides that the Minister may grant a person a permit authorizing the provision of a sanctioned service in accordance with, and subject to the conditions of, the exceptions set out in paragraph 9 of resolution 1970 (2011). In addition, the Minister may grant a permit to provide a sanctioned service in circumstances to which paragraph 4 of resolution 1973 (2011) applies.

Paragraph 10

10. The Libya Regulations define the items described in paragraph 10 (arms or related materiel) as "import sanctioned goods" (regulation 3). Regulation 8 prohibits the procurement of import sanctioned goods from Libya or from a person or entity in Libya.

11. Regulation 4ZB of the Customs (Prohibited Imports) Regulations 1956 also prohibits the importation of arms and related materiel from Libya.

Paragraph 17

12. The Libya Regulations define an asset that is owned or controlled, directly or indirectly by:

(a) A person designated in annex II of resolution 1970 (2011), or annex II of resolution 1973 (2011), or by the Committee or the Security Council for paragraph 17 of resolution 1970 (2011) ("designated person or entity"); or

(b) A person or entity acting on behalf of, or at the direction of, a designated person or entity; or

(c) An entity owned or controlled by a designated person or entity, including through illicit means,

as a "controlled asset".

13. Regulation 12 prohibits a person who holds a controlled asset from using or dealing with it, or allowing it to be used or dealt with, or facilitating the use of it or dealing with it, other than as authorized by a permit under regulation 13. In other words, a person who holds a controlled asset must "freeze" the asset.

14. Regulation 11 of the Libya Regulations prohibits a person, other than as authorized by a permit under regulation 13, from directly or indirectly making any asset available to, or for the benefit of:

- A designated person or entity; or
- A person or entity acting on behalf of, or at the direction of, a designated person or entity; or
- An entity owned or controlled by a designated person or entity, including through illicit means.

15. Regulation 13 provides that the Minister may, on application, grant a person a permit authorizing the making available of an asset to a person or entity that would otherwise contravene regulation 11, or a use of, or dealing with, a controlled asset, as allowed by, and subject to the conditions set out in, paragraphs 19, 20 and 21 of resolution 1970 (2011). The Libya Regulations describe these exceptions as follows:

- A "basic expense dealing", corresponding to paragraph 19 (a) of resolution 1970 (2011)
- An "extraordinary expense dealing", corresponding to paragraph 19 (b) of resolution 1970 (2011)
- A "legally required dealing", corresponding to paragraph 19 (c) of resolution 1970 (2011)
- A "contractual dealing", corresponding to paragraph 20 of resolution 1970 (2011)
- A "required payment dealing", corresponding to paragraph 21 of resolution 1970 (2011).

16. The exceptions for which a permit can be issued are defined in Regulation 5 of the Charter of the United Nations (Dealing with Assets) Regulations 2008.

Enforcement of the Libya Regulations

17. On 10 March 2011, regulations 6, 8, 9, 11 and 12 of the Libya Regulations, as well as regulation 13CS of the Customs (Prohibited Exports) Regulations 1958 and regulation 4ZB of the Customs (Prohibited Imports) Regulations 1956, were specified as "United Nations sanction enforcement laws", in accordance with subsection 2B(1) of the Charter of the United Nations Act 1945 (the Act). Contravention of a United Nations sanction enforcement law, or of a condition of a permit granted under a United Nations sanction enforcement law (such as a permit granted under regulations 7, 10 or 13), is an offence under section 27 of the Act.

18. In terms of the jurisdictional scope of the offence, section 15.1 of the Criminal Code 1995 applies to offences under section 27 of the Act relating to contraventions of regulations 6, 8, 9, 11 and 12. This means it applies to conduct constituting the offence when committed:

- Wholly or partly in Australia, or on board an Australian aircraft or ship
- Wholly outside Australia by an Australian citizen or an Australian body corporate.

19. Regulations 6, 8 and 9 also provide that the offence applies when the conduct constituting the offence was committed by a person, whether or not in Australia and whether or not an Australian citizen, using the services of an Australian ship or an Australian aircraft.

20. Regulations 6, 8 and 9 further provide that an Australian body corporate is liable for conduct contravening the regulation committed by another body corporate or entity, wherever incorporated or situated, if the Australian body corporate has effective control over the actions of that other body corporate or entity.

21. The maximum penalty upon conviction for individuals is 10 years' imprisonment or a fine the greater of A$ 275,000, or three times the value of the transaction (if this can be calculated). For a body corporate, the offence is an offence of strict liability unless it can prove that it took reasonable precautions and exercised due diligence to avoid contravening the regulation. The maximum penalty for bodies corporate upon conviction is a fine the greater of A$ 1.1 million, or three times the value of the transaction (if this can be calculated).

Paragraph 15

22. Paragraph 15 of resolution 1970 (2011) is implemented in Australia by the Migration (United Nations Security Council Resolutions) Regulations 2007 (the Migration (UNSCR) Regulations). The Migration (UNSCR) Regulations provide that a person who is or becomes the subject of specified resolutions of the Security Council that require Australia to prevent that person entering or transiting through Australian territory is unable to be granted a visa or, if a visa has already been granted, may have his or her visa cancelled, consistent with the obligations in the relevant Security Council resolution.

23. The Department of Immigration and Citizenship maintains a Movement Alert List, which includes the names of non-citizens whose eligibility for a visa grant or continuing eligibility to hold a visa may be an issue. All persons listed in annex I of resolution 1970 (2011) and annex I of resolution 1973 (2011) are included on the Movement Alert List. The names of all visa applicants are checked against the Movement Alert List prior to any decision to grant a visa to enter Australia. The Movement Alert List is electronically accessible to officers of the Department of Immigration and Citizenship posted to Australia's diplomatic and consular missions worldwide, although the matching process has been centralized in the Border Operations Centre in the Department of Immigration and Citizenship's National Office. Additional checks are also undertaken at Australian entry points to ensure that any person put on the Movement Alert List subsequent to a visa grant is identified.

24. Where there may be a potential match between a visa applicant and an individual listed on the Movement Alert List, further enquires must be made before a visa can be granted, or, if it has already been granted, to consider whether it can or must be cancelled. Led by the Department of Immigration and Citizenship, this is a consultative process including many Government bodies, which aims to resolve the Movement Alert List alert by examining available data on both applicants and individuals on the List.